Supreme Court, U.S.
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No. 97-1399

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

RICHARD BLUMENTHAL,
ATTORNEY GENERAL OF CONNECTICUT
PETITIONER

v.

PHILIP MORRIS, INC., ET AL.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF AMICUS CURIAE OF THE COMMONWEALTH OF MASSACHUSETTS, FORTY-FIVE STATES, THE DISTRICT OF COLUMBIA, GUAM, AND THE COMMONWEALTHS OF THE NORTHERN MARIANAS ISLANDS AND PUERTO RICO, IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... *ii*

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 3

REASONS FOR GRANTING REVIEW 5

1. BY ITS DEPARTURE FROM THIS COURT'S APPROACH TO STATE INTEREST ANALYSIS, THE DECISION BELOW CREATES AN UNPRECEDENTED "MONEY DAMAGES" EXCEPTION TO *YOUNGER* ABSTENTION 5

CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Baum v. Great Western Cities, Inc., 703 F.2d 1197 (10th Cir. 1983) 14

Burford v. Sun Oil Co., 319 U.S. 315 (1943) 5

California v. Arc America Corp., 490 U..S. 93, 101 (1989) 12

Caterpillar, Inc. v. Williams, 482 U.S. 386, 398-99 (1987) 10

Commonwealth of Massachusetts v. Philip Morris, Inc., et al., (Middlesex Sup. Ct. CV-95-7378) 6

Commonwealth v. Mass. CRINC, 392 Mass. 79, 88-89 (1984) 9

Dreisbach v. Murphy, 658 F.2d 720 (9th Cir. 1981) 14

Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 144 (1962) 13

Fulton v. Hecht, 580 F.2d 1243 (5th Cir. 1978) 14

Gerkin v. Davidson Grocery Co., 69 P.2d 122, 126, (1937) 11

Gresham Park Community Organization v. Howell, 652 F.2d 1227, 1248 (5th Cir. 1981) 14

Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) 7

Judice v. Vail, 430 U.S. 327 (1977) 7

Middlesex Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 432 (1982) 3

Mobil Oil Corp. v. City of Long Beach, 772 F.2d 534 (9th Cir. 1985) 5

Moore v. Sims, 442 U.S. 415 (1979) 8

New Orleans Public Service, Inc. v. City of New Orleans, 491 U.S. 35, 365, 366 (1989) 8

New York v. United States, 326 U.S. 572, 574-5 (1945) 2

Ohio Civil Rights Commission v. Dayton Christian Schools, Inc., 477 U.S. 619 (1986) 8

Penzoil Company v. Texaco, Inc., 481 U.S. 1, 10 (1987) 5

People v. Thomas Shelton Powers, M.D., Inc.,
2 Cal. App. 4;
330 Cal Rptr. 2d 34 (1992) 13

People ex. rel. Hartigan v. E & E Hauling, Inc.,
607 N.E.2d 165 (Ill. 1992) 9, 10

Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 136 (1968) 14

Philip Morris v. Harshbarger,
946 F. Supp. 1067 (D. Mass 1996) 6, 7

Porter v. Warner, 328 U.S. 395, 398-9 (1945) 12

Quakenbush v. Allstate Insurance Company,
116 S. Ct. 1712 (1996) 5

Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941) 6

State of Connecticut v. Philip Morris, Inc., et al., Docket No. CV 96-0072414 S 3

State of Florida ex. rel. Shevin v. Exxon Corp.,
526 F.2d 266 (5th Cir. 1976) 9, 10

State of Tennessee v. Heath,
806 S.W.2d 535, 537 (1990) 9

Steffel v. Thompson, 415 U.S. 452, 462 (1974) 7

Trainor v. Hernandez, 431 U.S. 434 (1977) 8

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,
454 U.S. 464, 470 (1982) 2

Younger v. Harris,
401 U.S. 37, 43 (1971) 1, 3, 4, 5, 7, 8, 9, 10, 13, 15

Federal Statutes

Federal Trade Commission Act, 15 U.S.C., § 45 14

State Statutes

Ala. Code §8-18-1 1

Alaska Stat. §45.50.471 1

Ariz. Rev. Stat. Ann. §44-1521 1

Ark. Code Ann. §4-88-101 1

Cal. Bus. & Prof. Code §§17200, 17500 1

Colo. Rev. Stat. §6-1-101; §6-1-114 1

Conn. Gen. Stat. §42-110a 1, 9, 11

Conn. Gen. Stat. §35-24 . . . . . 9, 11

Del. Code Ann. Tit. 6 §§ 2511, 2531 1

D.C. Code Ann. §28-3901 1

Fla. Stat. Ann. §501.201 1

Ga. Code Ann. §10-1-390 1

Haw. Rev. Stat. §480 1

Idaho Code §48-601 1

Ill. Comp. Stat. Ann. §505/1 1

Ind. Code Ann. §24-5-0.5-1 1

Iowa Code Ann. §714.16 1

Kan. Stat. Ann. §50-623 1

Ky. Rev. Stat. §367.110 1

La. Rev. Stat. Ann. §51:1401 1

Md. Com. Law Code Ann. §§13-101, 14-101 1

Mass. Gen. Laws Ann., c.93A 1, 14

Mich. Comp. Laws Ann. §445.901 1

Minn. Stat. Ann. §8.31, §325D.44, §325F.69 1

Miss. Code Ann. §75-24-1 1

Mo. Rev. Stat. §407.010 1

Mont. Code Ann. §30-14-101 1

Neb. Rev. Stat. §59-1601, §87-301 1

Nev. Rev. Stat. §§41.600, 598.0903 1

N.H. Rev. Stat. Ann. §358-A:1 1

N.J. Stat. Ann. §56:8-1 1

N.M. Stat. Ann. §57-12-1 1

N.Y. Gen. Bus. Law §§349, 350 1

N.C. Gen. Stat. §75-1.1 1

N.D. Gen. Stat. §51-15-01 1

Ohio Rev. Code Ann. §1345.01 ..... 1, 2

Okla. Stat. Ann. Tit. 15 §751 2

Or. Rev. Stat. §646.605 2

Pa. Stat. Ann. Tit. 73 §201-1 2

R.I. Gen. Law §6-13.1-1 2

S.C. Code Ann. §39-5-10 2

S.D. Cod. Laws Ann. §37-24-1 2

Tenn. Code Ann. §47-18-101 2

Tex. Bus. & Com. Code Ann. §17.41 2

Utah Code Ann. §§13-2-1, 13-5-1, 13-11-1 2

Vt. Stat. Ann. tit. 9 §2451 2

Va. Code §59.1-196 2

Wash. Rev. Code Ann. §19.86 2

W. Va. Code §46A-6-101 2

Wis. Stat. Ann. §100.18 2

Wis. Stat. Ann. §§100.20, 100-24, 100-26 2

Wyo. Stat. §40-12-101 2

Miscellaneous/Other

Black's Law Dictionary, 1427 (6th ed. 1990) 11

Ross, *State Attorneys General Powers and Responsibilities*, Appendix K, at 407-411 (1990) 2

STATEMENT OF INTEREST

The *amici curiae* Commonwealth of Massachusetts and the states identified on the cover, by and through their attorneys general, respectfully submit this brief in support of the Petition for Writ of Certiorari of Richard Blumenthal, Attorney General of Connecticut.

"Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger v. Harris*, 401 U.S. 37, 43 (1971). The States have an interest in the Petition because the decision of the Court of Appeals deals a heavy blow to the comity served by *Younger* abstention.

These States all have consumer protection and antitrust statutes to protect the welfare of their citizens and the integrity of their economies, and the attorneys general of the States are charged with enforcing these laws.[1] The States, through their

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[1] *See, e.g.*, Ala. Code §8-18-1; Alaska Stat. §45.50.471; Ariz. Rev. Stat. Ann. §44-1521 (misdemeanor penalties in certain cases); Ark. Code Ann. §4-88-101(criminal penalties in certain cases); Cal. Bus. & Prof. Code §§17200, 17500 ; Colo. Rev. Stat. §6-1-101 §6-1-114 (criminal penalties in certain cases); Conn. Gen. Stat. §42-110a; Del. Code Ann. Tit. 6 §§ 2511, 2531; D.C. Code Ann. §28-3901; Fla. Stat. Ann. §501.201; Ga. Code Ann. §10-1-390; Haw. Rev. Stat. §480; Idaho Code §48-601; Ill. Comp. Stat. Ann. §505/1 et. seq.; Ind. Code Ann. §24-5-0.5-1; Iowa Code Ann. §714.16; Kan. Stat. Ann. §50-623; Ky. Rev. Stat. §367.110; La. Rev. Stat. Ann. §51:1401; Md. Com. Law Code Ann. §§13-101, 14-101 (criminal penalties in certain cases); Mass. Gen. Laws Ann., c.93A; Mich. Comp. Laws Ann. §445.901; Minn. Stat. Ann. §8.31, §325D.44, §325F.69; Miss. Code Ann. §75-24-1 (criminal penalties in certain cases); Mo. Rev. Stat. §407.010 (criminal penalties in certain cases); Mont. Code Ann. §30-14-101 (criminal penalties in certain cases); Neb. Rev. Stat. §59-1601, §87-301 (criminal penalties in certain cases); Nev. Rev. Stat. §§41.600, 598.0903; N.H. Rev. Stat. Ann. §358-A:1; N.J. Stat. Ann. §56:8-1; N.M. Stat. Ann. §57-12-1; N.Y. Gen. Bus. Law §§349, 350; N.C. Gen. Stat. §75-1.1 (criminal penalties in certain cases); N.D. Gen. Stat. §51-15-01; Ohio

attorneys general, frequently bring enforcement actions in state courts seeking both injunctive relief and monetary damages against those engaged in unfair or deceptive conduct in trade and commerce. The judiciaries of the States frequently issue judgments in these actions, enjoining defendants' illegal conduct, and awarding penalties, restitution, disgorgement of ill-gotten gains, attorney's fees and costs to the states and harmed consumers. Such actions are brought on behalf of the States in the public interest, and the attorneys general represent their sovereign state, and not the individuals harmed.

The States respectfully request that the Court grant the Connecticut Attorney General's Petition for Writ of Certiorari. *Cf. New York v. United States*, 326 U.S. 572, 574-5 (1945) ("The strong urging of New York for further clarification of the amenability of the States to the taxing power of the United States led us to grant certiorari...The argument pressed by New York and the forty-five other States who, as *amici curiae*, have joined her deserves an answer."); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 470 (1982) ("Because of the unusually broad and novel view... adopted by the Court of

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Rev. Code Ann. §1345.01; Okla. Stat. Ann. Tit. 15 §751 (criminal penalties in certain cases); Or. Rev. Stat. §646.605; Pa. Stat. Ann. Tit. 73 §201-1; R.I. Gen. Law §6-13.1-1; S.C. Code Ann. §39-5-10; S.D. Cod. Laws Ann. §37-24-1 (criminal penalties in certain cases);Tenn. Code Ann. §47-18-101 (criminal penalties in certain cases); Tex. Bus. & Com. Code Ann. §17.41 (criminal penalties in certain cases, including concealing evidence); Utah Code Ann. §§13-2-1, 13-5-1, 13-11-1; Vt. Stat. Ann. tit. 9 §2451; Va. Code §59.1-196; Wash. Rev. Code Ann. §19.86, et. seq.; W. Va. Code §46A-6-101; Wis. Stat. Ann. §100.18 (criminal penalties in certain instances); Wis. Stat. Ann. §§100.20, 100-24, 100-26; Wyo. Stat. §40-12-101.

For citations to each state criminal and civil antitrust laws, see Ross, *State Attorneys General Powers and Responsibilities*, Appendix K, at 407-411 (1990).

Appeals, we granted certiorari.")

SUMMARY OF ARGUMENT

The issue in this case is whether Connecticut's action to enforce its laws against the tobacco companies implicates important state interests.[2] The Court should grant Petitioner's Petition for Writ of Certiorari because the decision below departs from this Court's jurisprudence and invites pre-emptive federal court speculation about the "primary aim" of not only the actions pending in over forty States against the tobacco companies, but of virtually every action brought by the States to enforce their consumer protection and antitrust laws, as well to enforce a host of other laws to protect the welfare of the citizens of each state.

In assessing the nature of the state interest for purposes of *Younger* abstention, the Court of Appeals gave short shrift to Connecticut's Complaint in the pending state enforcement action,[3] speculated without support that the "primary aim" of the State was to recover money for its Medicaid program, and gave insufficient weight to the interest of the States and their attorneys general in protecting the public and their respective

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[2] Where a federal plaintiff seeks to interfere with a state judicial proceeding, the federal court should abstain under *Younger* if (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity for the federal plaintiff to raise any federal constitutional challenges. *Middlesex Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982).

[3] *State of Connecticut v. Philip Morris, Inc, et. al.*, Docket No. CV 96-0072414 S (Judicial District of Litchfield). The defendants in that case, and the federal plaintiffs in the case below, are referred to herein as "the tobacco companies."

States from illegal conduct in business and trade. The Court of Appeal's re-casting of the State's case raises particularly grave concerns for the States because the action pending in the Connecticut state court implicates a vital state interest in the health and safety of its citizens, their protection against fraud and deception, and the economic well-being of the State.

The Court of Appeals's erroneous interpretation rests on two points viewed by the court as evidence that Connecticut's case "is not a generic proceeding of great importance to the state:" (1) the state sought "money damages;" and (2) private parties also could maintain actions under the state's consumer protection and antitrust statutes. (A11) Allowing these two points to be the measure of the State's interest in its judicial proceedings would shatter the foundations of state enforcement of consumer protection and antitrust laws, and the respect due such laws and proceedings under *Younger*.

When defendants, such as the tobacco companies in the Connecticut proceeding, invite the federal courts to interfere with these state enforcement proceedings, regardless of whether the State seeks money damages for state residents or state agencies, "proper respect for state functions" requires that the federal courts decline the invitation, and abstain. *Younger*, 401 U.S. at 44.

REASONS FOR GRANTING REVIEW

1. By Its Departure From This Court's Approach to State Interest Analysis, The Decision Below Creates an Unprecedented "Money Damages Exception" to the Younger Abstention Doctrine

This Court has never held that where a State brought a judicial proceeding, the state interest was of insufficient magnitude to justify *Younger* abstention.[4] Yet, the Court of Appeals concluded that the State of Connecticut has an insufficient interest in its enforcement action pending before

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[4] Indeed, in *Pennzoil Company v. Texaco, Inc.*, 481 U.S. 1,10 (1987), the Court held that *Younger* abstention warranted a dismissal of Texaco's federal challenge to the application of Texas's appellate bond requirements because "significant interests [would be] harmed by [the federal courts'] intrusion into the Texas judicial system." The State was not a party in this case, and even "expressly represented to the Court of Appeals that it 'has no interest in the outcome of the state-court adjudication underlying this cause,' except in its fair adjudication." 481 U.S. at 19 (Brennan, J., dissenting).

In *Quackenbush v. Allstate Insurance Company*, 517 U.S. 706 (1996), involving abstention under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), rather than under *Younger*, the Court weighed a strong federal interest in arbitrations under the Federal Arbitration Act against a state interest it saw "at first blush to present nothing more than a run-of-the-mill contract dispute," and rejected abstention. *Quackenbush* does not suggest any diminution of the Court's concern for comity under *Younger*. The state proceedings did not involve law enforcement on behalf of the state and public. Instead, Quackenbush, the state insurance commissioner, filed the suit in his capacity as trustee for insolvent reinsureds to recover reinsurance proceeds from Allstate. As in *Mobil Oil Corp. v. City of Long Beach*, 772 F.2d 534 (9th Cir. 1985), the issue was not state policy, or the enforcement of state law, but the meaning of a commercial contract.

the Connecticut judiciary, despite allegations similar to those that the Massachusetts Attorney General has observed involve "the most serious wrongdoing ever alleged in a civil action filed by the Commonwealth."[5]

The Court of Appeals reached this conclusion by misinterpreting the State complaint actually pending in state court. The Court of Appeals isolated only one portion of the relief sought by Connecticut-- reimbursement of its Medicaid costs-- and re-cast an enforcement action in the public interest as a "subrogation action grounded in tort:"

> Although the state pleads its action in state court as an enforcement action pursuant to CUTPA and the state antitrust law to prevent deception and unfair and anticompetitive business practices-- arguably important state interests-- the underlying claim is more accurately classified as a subrogation action grounded in tort. Notwithstanding certain other claims, the primary aim of the state is to obtain reimbursement from the tobacco industry for expenditures caused by its allegedly tortious conduct. This purpose has little to do with eradicating unfair trade practices or anticompetitive business practices.
>
> (A10-11) (citations omitted).[6]

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[5] Memorandum in Opposition to Defendants Motion to Dismiss, at 1, filed in *Commonwealth of Massachusetts v. Philip Morris, Inc. et. al.*, (Middlesex Sup. Ct. CV-95-7378).

[6] The Court of Appeals cited *Philip Morris v. Harshbarger*, 946 F. Supp. 1067 (D. Mass. 1996), where the court reached a similar conclusion, but abstained under *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The District Court in the Connecticut action

This decision conflicts with the very foundation of the *Younger* abstention doctrine.

Younger recognizes that under "Our Federalism," principles of comity counsel against permitting a state defendant to interfere with a state judicial proceeding by seeking equitable relief in federal court. If the defendant can vindicate its federal rights in the state proceeding, a duplicative federal action would needlessly disrupt important state interests and "reflect negatively upon the state court's ability to enforce constitutional principles." *Steffel v. Thompson*, 415 U.S. 452, 462 (1974).

The Court's *Younger* abstention decisions have carefully examined both the procedural state interest-- the integrity of its own judicial process-- and the substantive state interest at stake in that judicial process. Thus, *Younger* abstention recognizes the States' interest in criminal proceedings, *Younger*; proceedings "in aid of and closely related to criminal statutes," *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); the States' judicial contempt process, *Judice v. Vail*, 430 U.S. 327 (1977); and processes for enforcing state judgments, *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987).

Younger abstention also guards against federal

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distinguished *Harshbarger* on the grounds that the Massachusetts complaint did not then contain statutory consumer protection counts. The Massachusetts Attorney General's motion to dismiss the tobacco companies' federal complaint was filed on December 19, 1995, and argued July 30, 1996. Massachusetts did not file its amended complaint containing the consumer protection counts until August 7, 1996. While the *Harshbarger* decision was not issued until November, 1996, the chronology and the decision's reference only to the original December, 1995 complaint, indicate that the District Court in this case correctly stated that the *Harshbarger* decision did not address consumer protection and antitrust claims. In any event, that decision was incorrect for the reasons stated here.

interference with pending state judicial proceedings involving important state interests such as policies to safeguard the fiscal integrity of state welfare programs, *Trainor v. Hernandez*, 431 U.S. 434 (1977); to protect children from child abuse, *Moore v. Sims*, 442 U.S. 415 (1979); or to eliminate sex discrimination, *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986).

In none of these cases did the Court consider the availability of monetary relief under state law in deciding whether the principles of *Younger* applied to protect important state interests from undue federal interference. Nor did the Court consider whether other specific relief sought might affect the nature of the state interest in its judicial proceeding.[7]

In *New Orleans Public Service, Inc. v. City of New Orleans*, 491 U.S. 350, 366 (1989), the Court made clear that such speculation about the "outcomes" of the state judicial proceeding has no place in assessing whether important state interests are implicated in the state proceeding: "When we inquire into the substantiality of the State's interest in its proceedings we do not look narrowly to its interest in the *outcome* of the particular case-- which could arguably be off-set by a substantial federal interest in the opposite outcome." Instead, "what we look to is the importance of the generic proceedings to the state."

In this case, the generic proceeding is an enforcement

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[7] "In *Younger*, for example, we did not consult California's interest in prohibiting John Harris from distributing handbills, but rather its interest in 'carrying out the important and necessary task' of enforcing its criminal laws.' Similarly, in *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986), we looked not to Ohio's specific concern with Dayton Christian Schools' firing of Linda Hoskinson, but to its more general interest in preventing employers from engaging in sex discrimination...." *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 365 (1989)(citations omitted).

action under Connecticut's laws regulating commercial practices in the State. Connecticut may seek reimbursement to its Medicaid program, along with other monetary and injunctive relief, as a "particular outcome" of the action. The "generic proceedings," however, determined from the Complaint itself, are proceedings to enforce the State's laws against defendants alleged to have engaged in serious wrongdoing that has harmed the health and welfare of the State's citizens. For *Younger* purposes, the question is not whether the "outcome" will lead to, among other relief, reimbursement of Connecticut's Medicaid fund, but whether the State has an important interest in regulating the conduct of those doing business in the State.

The State of Connecticut's action against the tobacco companies seeks to enforce state law under the Attorney General's common law powers to represent the public interest of the state, as well as under the specific statutory authority, and responsibility, to enforce the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §42-110a, *et. seq.* and the Connecticut Antitrust Act, Conn. Gen. Stat. §35-24, *et. seq.* *See, e.g.*, *State of Florida ex. rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268-9 (5th Cir. 1976) (Duties and powers of state attorneys general "include all those exercised at common law... he typically may exercise all such authority as the public interest requires. And the attorney general has wide discretion in making the determination as to the public interest."); *State of Tennessee v. Heath*, 806 S.W.2d 535, 537 (1990), *citing* 7 Am.Jur.2d Attorney General §9 (1980); *People ex. rel. Hartigan v. E & E Hauling, Inc.*, 607 N.E.2d 165 (Ill. 1992); *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 88-89 (1984) ("the Attorney General is acting in accordance with his broad common law and statutory powers to represent the public interest" and "the Attorney General has a general statutory mandate, in addition to any specific statutory mandate, to

protect the public interest.")

The Attorney General's inclusion of a state agency, such as its Medicaid program, among those harmed by illegal conduct does not alter the sovereign nature of the State's effort to enforce its laws against defendants alleged to have harmed both consumers and state agencies. In cases such as this, the state attorneys general do not simply represent an agency seeking reimbursement, but represent the larger interest of the State and its people. *People ex. rel. Hartigan v. E & E Hauling, Inc.*, 607 N.E.2d 165, 170 (Ill. 1992) (Attorney General had standing under the common law powers to represent "the broader interests of the State..." and "does not purport to represent the [state agency], but rather the People and taxpayers of the State."); *State of Florida ex. rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

The Court of Appeals's decision, however, deems the Attorney General of Connecticut in this action to be nothing more than a collection attorney for the State's Medicaid fund, and deems the sovereign enforcement of the State's laws as nothing more than a collection action.

If the respect for the States' interest in their judicial proceedings under *Younger* is to have any meaning, a federal court cannot attempt to discern this interest by conducting an inquiry into, or speculating about, the supposed motives of the State's highest law enforcement officer. The only appropriate evidence as to the nature of the state proceeding, and the state interest implicated by that proceeding, is the state law as asserted in the complaint and other pleadings from that proceeding. *Cf. Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99(1987) (under "well-pleaded complaint rule" for removal to federal court, "the plaintiff is the master of the complaint...")

Connecticut's Complaint, to be sure, includes allegations that would support a court award of reimbursement

for the State's increased Medicaid costs due to the conduct of the tobacco companies. The State, however, clearly seeks to protect the health of the state's residents, including children, through enforcement of the Connecticut Unfair Trade Practices Act and the Connecticut Antitrust Act, and the common law of Connecticut. The Complaint's allegations concerning the conduct of the tobacco companies, the harm resulting from that conduct, as well as the nature of relief sought, demonstrate that Connecticut's state court action cannot fairly be described as a "subrogation action."[8]

The State alleges that the tobacco companies conspired to "mislead, deceive, and confuse the State of Connecticut and its residents regarding" the dangers and addictiveness of tobacco use (A24-5); the tobacco companies direct their products at children, who cannot legally purchase them, as a central part of the manufacturers' business strategy (A25-6); the State of Connecticut has a long-standing policy of preventing minors from using tobacco products, and it is a crime in that state to provide minors with tobacco (A26).

The State also alleges harms that implicate traditional, and substantial, state interests in protecting consumers, the health of its residents, and fair business competition. The CUTPA violations limited the ability of consumers to evaluate information about tobacco products and "to obtain safer tobacco products at the lowest possible competitive price," caused adverse health consequences to Connecticut's residents, and facilitated and encouraged the use of tobacco by minors

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[8] Subrogation is the "substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies or securities." Black's Law Dictionary, 1427 (6th ed. 1990), *citing Gerken v. Davidson Grocery Co.*, 69 P.2d 122, 126 (1937).

(A116-7); the antitrust violations misled consumers and affected the allocation of resources in the Connecticut economy (A121-122).

Finally, the relief requested in the state proceeding goes well beyond the simple reimbursement of funds to the State, but also includes injunctive relief requiring the defendants to cease the CUTPA violations; to require the disclosure of research and studies concerning the dangers of tobacco; to fund public education campaigns and tobacco cessation programs; to cease the marketing and sales targeting of children. The State also seeks the disgorgement of ill-gotten gains, restitution, punitive damages, and civil penalties. (A127-32).[9]

The State's complaint, therefore, demonstrates that Connecticut's interest in bringing its action against the tobacco companies is to protect its citizens from the serious wrongdoing alleged in the Complaint, enforce state laws regarding unfair, deceptive or anticompetitive business practices, and restore those harmed by unlawful activities. *Cf., California v. Arc America Corp.*, 490 U.S. 93, 101 (1989) ("state common-law and statutory remedies against monopolies and unfair business practices" are among the "historic police powers of the States"); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 144 (1962) ("...the States have always possessed a legitimate interest in 'the protection of their people

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[9] The tobacco companies claim that they seek only to enjoin the seeking or awarding of monetary relief in the state case (A10). Such a step, however, would profoundly interfere with the on-going state judicial proceeding. A state court could award Connecticut not merely reimbursement of the State's Medicaid expenditures, but restitution and penalties under its consumer protection or antitrust statutes. A federal injunction against such remedies in a state enforcement action, where the tobacco companies are free to raise all federal defenses and rights, would unnecessarily restrain not only the State's enforcement efforts, but also the State judiciary's selection of available remedies.

against fraud and deception in the sale of food products' at retail markets within their borders.") (citation and internal ellipses omitted).

The isolation by the Court of Appeals of only the money damages portion of the relief sought by Connecticut is an irrelevant exercise under *Younger*. "Money damages"--whether in the form of restitution of ascertainable losses, civil or criminal penalties, disgorgement of ill-gotten gains, and reimbursement of the costs of investigation, are an integral part of most state consumer protection or antitrust statutes. *Supra*, n. 1; *People v. Thomas Shelton Powers, M.D., Inc.*, 2 Cal. App. 4th 330; 3 Cal Rptr.2d 34 (1992) ("[T]he laws against unfair business practices were drafted in large part to prevent a wrongdoer from retaining the benefits of its illegal acts.")

The recovery by Connecticut of such damages would serve the same purpose as in most state enforcement actions: to restore victims; punish wrongdoers; and deter other violations of law. If the inclusion of "money damages" among relief sought by the States is a measurement of whether *Younger* applies, there would be, contrary to the jurisprudence of this Court, very few instances of state law enforcement that would implicate a sufficient state interest to justify *Younger* abstention.

In addition, the fact that Connecticut, and most other States and the United States, supplement public enforcement of consumer protection and antitrust laws by authorizing private actions does not diminish the States' interest in their own proceedings to enforce such laws.[10]

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[10] Statutes cited n. 1, *supra*. *See,also, Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 136 (1968) (petition for certiorari granted and decision below reversed, because erroneous "rulings by the Court of Appeals seemed to threaten the effectiveness of the private action as a means for enforcing the antitrust policy of the United States...") *Cf.*,

If anything, "private attorney general" provisions reflect the importance of the state interest by ensuring greater judicial enforcement than would otherwise be possible within the resources of the public enforcement agencies. As the Court of Appeals for the Fifth Circuit observed in *Gresham Park Community Organization v. Howell*, 652 F.2d 1227, 1248 (5th Cir. 1981), "we find unpersuasive any suggestion that Georgia's 'delegation' of the civil suit to a private party implies a lesser state interest: on the contrary, granting private parties who have a strong self-interest in stopping unlawful behavior the right to sue on their own behalf appears to indicate a greater state interest in eliminating behavior elsewhere made criminal."

Moreover, private actions and attorney general actions to enforce the consumer protection laws, while both supporting overall state policy, are not the same. When state attorneys general bring actions to enforce consumer protection or antitrust laws, they do so in the public interest. For example, under the Massachusetts consumer protection statute, private actions may be brought under sections 9 or 11 of General Laws, Chapter 93A, but only the Attorney General may utilize section 4, which requires that the action be brought in the public interest.

The Court of Appeals, therefore, erroneously relied on the States' use of money damages and private remedies to denigrate the substantial interest of the States in preventing and punishing illegal business conduct. The States have a vital interest in protecting their citizens from such conduct, and,

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Fulton v. Hecht, 580 F.2d 1243 (5th Cir. 1978), *rehearing denied*, 585 F.2d 520, *cert. denied*, 440 U.S. 981 (1979) (no implied right of private action under Federal Trade Commission Act, 15 U.S.C. §45); *Baum v. Great Western Cities, Inc.*, 703 F.2d 1197 (10th Cir. 1983) (same); *Dreisbach v. Murphy*, 658 F.2d 720 (9th Cir. 1981) (same).

under *Younger*, enforcement actions on behalf of this interest must remain free from federal interference.

CONCLUSION

The Commonwealth of Massachusetts and the States named herein respectfully request that the Court grant the Petitioner's Request for a Writ of Certiorari.

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